102.SBC IInd APPEAL NO.188/2006
Smt. Nani vs Bakshi Ram & others.

Date of Order :- 17.5.06

HON'BLE MR.JUSTICE PRAKASH TATIA

Mr.P.C.Purohit,for the appellant.

Heard learned counsel for the appellant plaintiff. The plaintiff filed a suit for cancellation of the sale deed dated 2nd March 1995 which has been executed by the plaintiffs father in favour of his grand son defendant No.4. The case of the plaintiff was that plaintiffs father, at the time of plaintiff's marriage in the year 1072 declared that the property in question will be given in gift to her . The plaintiff's father thereafter executed a deed on 15th April 1988 and gave the property to the plaintiff. Since 15th April 1988 plaintiff is in possession of the suit property. The plaintiff's father despite this fact sold the property in dispute to the defendant No.4 by registered sale deed dated 2nd March 1995.

In the trial court when plaintiff tendered deed dated 15th April 1988 an evidence, an objection was raised about its admissibility for want of registration and proper stamp duty, upon which the trial Court held that the plaintiff failed to prove that plaintiff's father declared that he will gave in gift the plot in question. It has also been held by the trial Court that plaintiff failed to prove her possession over the plot in dispute since last 12 years, as according to plaintiff possession was

given to her on 15th April 1988 as mentioned in the deed dated 15th April 1988 whereas suit has been filed on 23rd December 1995. The trial Court, therefore, dismissed the suit of the plaintiff.

The plaintiff preferred an appeal which was also dismissed by the trial Court. However, it may be relevant to mention here that the deed dated 15th April 1988 was not admitted in evidence still the first appellate Court considered the facts mentioned in the said deed and held that the deed dated 15th April 1988 is itself the gift deed and the facts stated in the gift deed are contrary to the stand taken by the plaintiff herself. Apart from the fact that the plaintiff failed to prove that the property was gifted to her by her father.

Being aggrieved of the judgment, appellant preferred this second appeal.

The finding recorded by the two courts below that the suit property was never gifted is based on evidence and correct appreciation of the facts of the case. The learned counsel for the appellant has shown original deed dated 15th April 1988 to this Court also. The plea taken by the plaintiff that the suit property was gifted by plaintiff's father to plaintiff has not been proved ,and, further, in view of the plaintiff's own document which can be used for colateral purpose, clearly destroy the case of the plaintiff that declaration of his father at the time of her marriage about giving plot in dispute to the

plaintiff at the time of her marriage. The deed dated 15th April 1988 is a self-contained document purported to have been executed to create right of the plaintiff in immovable property and that cannot be done without a registered instrument. In view of the said document dated 15th April 1988 also no case is made by the appellant so as to call for interference by this Court.

In view of the above, the plaintiff failed to prove that suit property was her 'Stri-Dhan' ,therefore, no plea on the basis of alleged 'Stri-Dhan' allowed to be raised. Hence, no substantial question of law arose in this appeal. Hence, appeal is dismissed.

(PRAKASH TATIA)J.

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